

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARGARET ALFANO, on behalf of herself and all	:	
others similarly situated, and SHAAN KASTUAR,	:	
individually,	:	
	:	
Plaintiff,	:	18-cv-02558-LTS-OTW
	:	
-against-	:	DECLARATION OF
	:	EVAN BARTLETT
ZOCDOC, INC.,	:	
	:	
Defendant.	:	
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I, EVAN BARTLETT, hereby declare and state as follows:

1. I am the Senior Director of Sales at Zocdoc, Inc. ("Zocdoc"), and work at Zocdoc's offices in New York, New York. I began working for Zocdoc as a Director of Sales in September 2013. As such, the facts stated below are true and of my own personal knowledge. If called as a witness to testify to these facts, I could do so competently.

2. Zocdoc is an online medical care appointment booking service that provides patients with the ability to, among other things, find and schedule appointments with health care providers. Zocdoc's services are free of charge for patients, while providers pay subscription fees to be included on Zocdoc's online platform.

3. Zocdoc maintains United States offices in Scottsdale, Arizona and New York, New York (the "NY Office").

4. When I began working for Zocdoc, I was responsible for managing Zocdoc's team of Sales Origination Associates (formerly Business Origination Associates) ("SOAs").

5. In April 2016, I began managing Zocdoc's entire local sales team.

6. In November 2015 and April 2016, Zocdoc underwent a number of organizational restructurings. For purposes of this Declaration, I will address Zocdoc's organizational structure and policies as they existed between October 2013 and November 2015.

7. During the relevant period, Zocdoc sold subscription plans to providers and practices that included marketing, promotion, and advertising services.

8. Zocdoc does not sell software. Although it creates technical solutions for practices or health systems clients, e.g., a "widget" or online plugin allows practices who are customers of Zocdoc to easily integrate Zocdoc's online booking into their website, it does not and never has sold hosted software.

9. From March 2015 to November 2015, Zocdoc's sales employees included, among other positions, employees responsible for communicating with providers prior to their purchase of Zocdoc services ("Pre-Sale Employees"), and (ii) employees responsible for communicating with providers subsequent to their purchase of Zocdoc services ("Post-Sale Employees").

10. Zocdoc's Pre-Sale Employees included Sales Origination Associates (formerly called Business Origination Associates) ("SOAs"), Inside Sales Executives ("ISEs"), Sales Associates ("SAs"), and Sales Executives ("SEs"). Each of these positions entailed different duties and compensation structures.

11. SOAs were junior-level employees responsible for "cold-calling" potential customers to schedule meetings between the potential customers and ISEs and SAs. They were primarily in a training program. SOAs were not involved in closing sales, and performed their duties at Zocdoc's offices.

12. SOAs received a base salary and commissions based on how many meetings they were able to set up with potential customers, and the business that resulted from any such

meetings. Unlike ISEs and SAs, SOAs typically received less than 50% of their total compensation through commissions.

13. ISEs and SAs were responsible for selling Zocdoc's products and services to potential customers, closing sales, assisting customers with selecting services, and partially building customer profiles. ISEs and SAs also commonly assisted customers with their use of Zocdoc's services, and researched healthcare practices to assess their fitness for inclusion among Zocdoc's services.

14. ISEs and SAs received referrals from SOAs; these "referrals" were "meetings" or "pitches" set by the SOA. ISEs and SAs also "cold-called" potential customers. They scheduled meetings with potential customers, and led customer meetings that SOAs scheduled. NY Office ISEs performed certain of their duties at Zocdoc's office, and certain of their duties away from the office.

15. While ISEs received a base salary and commissions based on the number of sales they closed, ISEs received a higher base salary than SAs. SAs received a higher base salary than SOAs. The compensation plan was structured for ISEs to earn approximately 50% of their compensation through their base salary and 50% of their compensation through commissions.

16. Approximately 10-25% of ISEs and SAs earned more than 50% of their compensation through commissions. These employees typically earned more than \$100,000 per year. Some ISEs and SAs earned more than \$200,000 per year.

17. SAs were junior-level ISEs whose job duties and compensation structure mirrored that of ISEs. ISEs and SAs received more of their total compensation through commissions than SOAs did.

18. SEs were responsible for outside sales, which entailed selling Zocdoc's services through visits to the offices of potential customers. SEs regularly performed their duties away from Zocdoc's offices. Standard SE duties included "cold calling" prospects in their assigned territory, and setting up meetings with providers or practices, building a professional profile for the provider or practice, meeting with the practice's staff, and scheduling training/onboarding of the practice to ensure a successful, long-term relationship with Zocdoc. SEs received a base salary and commissions based on the number of sales they closed. Sales employees' base salaries increased commensurate with role responsibility and experience.

19. There was considerable variance among the salaries of the Pre-Sale Employee positions. Indeed, employees were compensated at increasingly higher base salaries to reflect increased responsibilities, different skill sets and increased experience. For example, SAs had a higher base salary than SOAs, SEs had a higher base salary than SAs, and ISEs had a higher base salary than SEs. SAs had a higher base salary than SOAs, SEs had a higher base salary than SAs, and ISEs had a higher base salary than SEs.

20. Each Pre-Sale Employee position also reflected a combination of employee ambition, qualifications, and skills. For instance, employees who were successful in sales but demonstrated less client relationship-building skills might ascend to ISE rather than AM.

21. Zocdoc's sales employees performed their duties as part of teams. While SOAs were generally assigned to teams of fifteen to twenty employees, Zocdoc's other sales employees were assigned to teams of five to twenty employees. Zocdoc assigned a supervisor to each team, and each supervisor possessed a significant degree of autonomy to set the team's goals, rules, and regular work hours. Team goals, rules, and regular work hours thus varied greatly depending on the team's supervisor. Some supervisors, for example, set fixed working schedules

for their teams, while others permitted team members to determine their own arrival and departure times. No Zocdoc policy require employees to work more than forty hours per week, or indirectly compel that result.

22. Upon information and belief, prior to November 2015, many of the employees who met their sales goals did so within a forty-hour week.¹ Some top performers were able to exceed their sales goals while working less than forty hours per week.

23. While employees in the NY Office were not required to work more than forty hours per week, some sales employees elected to do so to earn higher commissions. Some of those employees produced more and typically earned well in excess of \$100,000 per year in total compensation.

24. Zocdoc provided all employees with a catered lunch every Monday through Friday, except for holidays. Upon information and belief, prior to November 2015, Zocdoc's sales employees took lunch breaks of thirty minutes to one hour for lunch every day.

25. Additionally, Zocdoc has a fun room in the NY Office that includes free snacks, ping pong tables and arcade games. During the relevant period, Zocdoc's sales employees frequently took unscheduled breaks during the day to enjoy these amenities, in addition to their lunch breaks.

26. Prior to November 2015, the vast majority of sales employees did not work later than 6:00 p.m. Those individuals who regularly worked later than 6:00 p.m. had the potential to earn more than \$100,000 in total compensation, which is why some of them were motivated to work hard. Additionally, there were sales employees assigned to a territory in the western

¹ In November 2015, Zocdoc instituted a policy that requires certain sales employees to obtain advanced approval prior to working more than forty hours per week.

United States, and thus began working later in the day than those responsible for territories in the eastern United States.

27. Employees' work schedules may be adjusted by their manager depending on the assigned sales territory (*e.g.*, managers frequently permitted sales employees to arrive an hour later or an hour earlier corresponding to the business hours of their teams' assigned territory). As sales employee shifts were frequently scheduled or altered based on regional time zones and targets, employees did uniformly work from 9:00 a.m. to 5:00 p.m.

I declare under penalty of perjury under the laws of the United States of America that the facts stated above are true and correct.

Executed this 29th day of June, 2018, at New York, New York.



Evan Bartlett